

BEFORE THE
INDUSTRIAL MEDICAL COUNCIL
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KESHO HURRIA, M.D.
3347 West Ball Road
Anaheim, CA 92083

Qualified Medical Evaluator No. 001980

License No. A-32102

Respondent.

Case No. 7200-4672


OAH No. L2002010651

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Department of Industrial Relations as its Decision in the above-entitled matter.

This Decision shall become effective on 4-18-2002.

IT IS SO ORDERED _____



Richard Pitts, Co-Chair
Industrial Medical Council

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Anaheim, CA 92803

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OAH No. L2002010651

Qualified Medical Evaluator No. 001980

License No. A-32102

Respondent.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on February 26, 2002, in Los Angeles, California.

David A. Kizer, Counsel, Department of Industrial Relations, Industrial Medical Council, represented complainant.

Kesho Hurria, M.D. was present and represented himself.

The case was submitted for decision on February 26, 2002.

FACTUAL FINDINGS

1. Complainant D. Allan MacKenzie, M.D., F.A.A.O.S., brought the Accusation solely in his official capacity as the Executive Medical Director of the Industrial Medical Council (IMC), Department of Industrial Relations, State of California.

2. Kesho Hurria, M.D. (respondent) first applied as a Qualified Medical Evaluator (QME) to the IMC in 1993, meeting the statutory criteria in effect at that time. He was assigned QME No. 001980. In 1994, he took and passed the QME Competency Exam. Respondent was at all times relevant to the Accusation a QME and remains a QME as of this date.

3. On June 20, 2001, the Division of Medical Quality of the Medical Board of California (Board) issued a Decision that included findings that respondent had committed repeated negligent acts and exhibited incompetence in connection with his treatment and care of a patient who had fractured her right ankle. Respondent's Physician's and Surgeon's Certificate was revoked by the Board. However, the revocation was stayed and he was placed on probation for five (5) years under specific terms and conditions. His probation will continue through July 2006.

4. Respondent has complied with the terms and conditions of his probation to date. He was required to attend a clinical training/education program which he completed through the Physician Assessment and Clinical Education Program (PACE) offered by the University of California – San Diego School of Medicine. He was also required to take and pass an oral clinical exam or written exam in a subject to be designated and administered by the Board. He has done so. In addition, he has remained current with all continuing education requirements.

Respondent indicates that he is in full compliance with all rules and regulations governing his work as a QME. He devotes more than a third of his practice and time to providing direct medical treatment. His QME work ranges between 1 and 2 cases per month.

5. It is important to respondent that he be allowed to continue working as a QME. He has a difficult time seeing the connection between Board disciplinary action and his work as a QME, especially since he is not treating or operating upon any of the individuals he evaluates as a QME. In fact, an important qualification of a QME is the ability to practice medicine in a safe and competent manner and to meet appropriate medical or professional standards under Labor Code section 139.2.

LEGAL CONCLUSIONS

1. Under Labor Code section 139.2, subdivision (m): "The council shall suspend or terminate as a medical evaluator any physician who has been suspended or placed on probation by the relevant licensing board."

Cause exists to suspend or terminate respondent as a QME by reason of the matters set forth in Finding 3.

2. In determining the level of penalty to be imposed in a given case IMC Sanction Guidelines call for consideration of the seriousness of the violation, whether or not a violation is an isolated incident, whether or not a violation is intentional as opposed to negligent, whether there is a prior history of discipline and whether or not further education or training would be beneficial.

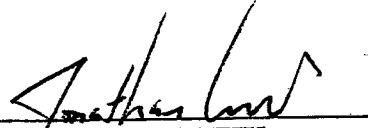
respondent's professional area of practice, and remain in full compliance with any court ordered criminal probation, payments and other orders.

3. As part of probation, respondent is suspended from performing any function as a QME or an Agreed Medical Evaluator for sixty (60) days, beginning on the sixteenth (16th) day after the effective date of this decision.
4. Respondent shall submit quarterly declarations under penalty of perjury of forms provided by the IMC, stating whether there has been compliance with all the conditions of probation.
5. Respondent shall comply with the IMC's probation surveillance program. Respondent shall, at all times, keep the IMC informed of his address of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the assigned IMC probation monitor. Under no circumstances shall a post office box serve as an address of record. Respondent shall also immediately inform the IMC, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.
6. Respondent shall appear in person for interviews with the IMC, its designee or its designated physician(s) or medical consultant(s), upon request at various intervals and with reasonable notice.
7. In the event respondent should leave California to reside or to practice outside the State, or for any reason should respondent's QME status become inactive in California, respondent shall notify the IMC probation monitor in writing within ten (10) days of the dates of departure and return, or the dates of inactive QME status in California. Non practice is defined as any period of time exceeding thirty (30) days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the IMC or its designee shall be considered as time spent in practice. Periods of temporary residence or practice outside of California or periods of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.
8. Upon successful completion of probation, respondent's QME certificate shall be fully restored.
9. If respondent violates probation in any respect, the IMC, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or

petition to revoke probation is filed against respondent during probation, the IMC shall have continuing jurisdiction until the matter is final and the period of probation shall be extended until the matter of the new accusation or petition to revoke is final.

10. Following the effective date of this decision, if respondent ceases practicing as a QME, due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his QME certificate to the IMC. The IMC reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered QME certificate, respondent will no longer be subject to the terms and conditions of probation.
11. Upon the effective date of this decision, the IMC shall make a notation on each letter sent to an unrepresented injured worker, which lists respondent's name on a panel of QMEs, indicating that respondent is currently on probation as a QME. IMC also shall make a notation next to respondent's name wherever it appears in each QME roster issued during the period in which respondent is on probation on the date the roster is issued. Respondent shall answer truthfully any questions from injured workers or other parties about respondent's probationary QME status.

DATED: March 8, 2002


JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings